

Message Text

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ACTION NEA-16

INFO OCT-01 EUR-25 ISO-00 PM-07 NSC-07 SP-03 SS-20 RSC-01

L-03 CIAE-00 INR-11 NSAE-00 SAM-01 SSO-00 NSCE-00

INRE-00 DRC-01 /096 W

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O P 010852Z OCT 74

FM AMEMBASSY MANAMA BAHRAIN

TO SECSTATE WASHINGTON DC IMMEDIATE 1540

INFO CINCUSNAVEUR LONDON UK PRIORITY

COMIDEASTFOR PRIORITY

CNO WASHINGTON DC PRIORITY

SECDEF WASHINGTON DC PRIORITY

JCS WASHINGTON DC PRIORITY

C O N F I D E N T I A L MANAMA 0792

E.O. 11652: GDS

TAGS : MARR, US, BA

SUBJECT : MIDDLE EAST FORCE STATIONING AGREEMENT:
CRIMINAL JURISDICTION

REFS: A) STATE 214586; B) MANAMA 777

1. WHEN I MET WITH BAHARNA SEPTEMBER 30 HE SOMEWHAT APOLOGETICALLY SAID GOB, AFTER CAREFUL REVIEW OUR LATEST DRAFT NOTE ON JURISDICTION, STILL HAD A NUMBER OF POINTS TO RAISE; SEEKING A FEW MINOR TEXTUAL CHANGES, A CLARIFICATION OF ONE POINT, AND, MOST IMPORTANT, EITHER ALTERED LANGUAGE IN, OR A MORE PRECISE UNDERSTANDING OF, PARA. (1) DEALING WITH JURISDICTION OVER SECURITY OFFENSES.

2. BAHARNA SUGGESTS FOLLOWING MINOR TEXTUAL CHANGES TO WHICH I SUGGEST WE AGREE:

(A) SECOND PARAGRAPH, FIRST SENTENCE, MOVE PHRASE "THE STATE OF BAHRAIN" TO FOLLOW "OVER ITS TERRITORY" RATHER THAN "IMPLICIT RECOGNITION THAT".

(B) FIFTH PARAGRAPH; I.E. PARA. (1): IN FIRST
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SENTENCE CHANGE "GOVERNMENT OF BAHRAIN MAY EXERCISE"

TO GOVERNMENT OF BAHRAIN SHALL EXERCISE". IN SECOND SENTENCE CHANGE "VIOLATION OF LAW PROTECTING STATE SECRETS" TO "VIOLATION OF STATE SECRETS LAWS".

(C) PARAGRAPH NOTED AS 2(C) CHANGE POSITION OF "IN BAHRAIN" TO FOLLOW "BY ONE GOVERNMENT" RATHER THAN "PRECLUDE THE EXERCISE OF JURISDICTION".

3. IN PARAGRAPH NOTED AS (4), BAHARNA HAS ASKED FOR CLARIFICATION OF THE QUALIFYING PHRASE "AND CONSISTENT WITH UNITED STATES LAW", NOTING THAT SUPERFICIALLY, THOUGH PRESUMABLY NOT IN INTENT, THE PHRASE SUGGESTS U.S. LAW WILL LIMIT THE WILLINGNESS OF USG AUTHORITIES TO COOPERATE WITH GOB IN EFFECTIVE PROSECUTION OF FORCE MEMBERS LIABLE TO BAHRAIN JURISDICTION. I EXPLAINED THIS PHRASE HAD BEEN DISCUSSED DURING MY WASHINGTON CONSULTATION, AND IN ESSENCE WAS DESIGNED TO GUARD AGAINST COMMITTING U.S. NAVAL AUTHORITIES TO A DEGREE OF COOPERATION BEYOND THEIR POWER; FOR EXAMPLE, IN SITUATIONS IN WHICH "HABEAS CORPUS" PROBLEMS MIGHT ARISE OR IN WHICH DETENTION OF A FORCE MEMBER SUSPECTED OF AN OFFENSE, WHILE PRUDENT, MIGHT NOT BE PERMISSABLE UNDER U.S. LAW. IN ENSUING DISCUSSION, BAHARNA INDICATED HE WAS NOT URGING THE PHRASE BE DELETED, MERELY CLARIFIED. I BELIEVE WE COULD HANDLE THIS BY PROVIDING ME LANGUAGE, A CONCISE PARAGRAPH, EXPLAINING INTENT THIS PHRASE AND AUTHORIZING ME TO GIVE IT TO BAHARNA AS "TALKING PAPER" TO BE ATTACHED TO GOB'S FILE FOR FUTURE REFERENCE SHOULD QUESTION OF MEANING OF PARA. (4) EVER ARISE.

4. (PLEASE SEE PARAS. 3 AND 4 OF MANAMA 777). BAHARNA'S REAL, AND ALLEGEDLY "FINAL", PROBLEM WITH OUR DRAFT REMAINS QUESTION OF EXCLUSIVE AND CONCURRENT JURISDICTION IN MATTERS RELATING TO SECURITY OFFENSES AGAINST BAHRAIN. (FIRST SENTENCE PARA (1) OF DRAFT NOTICE). RECOGNIZING THAT SUCH OFFENSES AS MIGHT OCCUR ARE UNLIKELY TO BE PUNISHABLE UNDER BOTH BAHRAINI AND U.S. LAW, HE QUESTIONS PRACTICAL NEED TO INTRODUCE CONCEPT OF CONCURRENT JURISDICTION HERE BY USE OF PHRASE "BUT NOT BY THE LAW OF THE UNITED STATES" AND SUGGEST FIRST SENTENCE PARA. (1) CONFIDENTIAL

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TERMINATE WITH PHRASE "PUNISHABLE BY THE LAW OF BAHRAIN". HIS CONCERN IS THAT OUR PROPOSED LANGUAGE STILL SUGGESTS A SIGNIFICANT LIMITATION ON GOB'S POWER TO EXERCISE JURISDICTION OVER SECURITY CASES, OBVIOUSLY A POLITICALLY SENSITIVE CATEGORY, AND THAT HENCE PROPOSED LANGUAGE IS MORE A POLITICAL LIABILITY FOR GOB THAN A PRACTICAL SAFEGUARD FOR USG. WE WENT AROUND ONCE AGAIN ON OUR NEED TO PROTECT PRINCIPLE OF CONCURRENT

JURISDICTION; HE UNDERSTANDS THIS. (I DREW ON STATE 195431 REPEATEDLY). HE ALSO ASSUMES THAT SHOULD A SECURITY OFFENSE CASE ARISE PUNISHABLE UNDER BOTH BAHRAIN AND U.S. LAW, GOB WOULD HAVE RECOURSE TO FIRST SENTENCE PARA. (2) TO REQUEST JURISDICTION UNDER "PARTICULAR IMPORTANCE" CRITERIA. NEVERTHELESS, HE HAS A SERIOUS PROBLEM WITH THE COSMETIC ASPECT OF FIRST SENTENCE PARA. (1). I DO NOT BELIEVE WE SHOULD YIELD, OR NEED YIELD, ON THIS BASIC POINT IF WE DO IN FACT ATTACH REAL IMPORTANCE TO IT (AS STATE 195431 SUGGESTS). I DO THINK, HOWEVER, WE OWE BAHARNA A MORE CONVINCING EXPLANATION OF OUR POSITION THAN I HAVE BEEN ABLE TO GIVE HIM TO DATE, PARTICULARLY A REALISTIC EXAMPLE BASED ON EXPERIENCE ELSEWHERE OF THE SORT OF SECURITY OFFENSE WHICH WOULD VIOLATE THE LAW OF BOTH BAHRAIN AND THE UNITED STATES. HERE AGAIN, A "TALKING PAPER" TO BE ATTACHED TO GOB FILE IN CLARIFICATION OF FIRST SENTENCE PARA. (1) MIGHT REPEAT MIGHT DO THE TRICK.

5. I REMAIN CONVINCED BAHARNA CONSIDERS HIS SUGGESTIONS CONSTRUCTIVE IN THE CAUSE OF CLARITY FOR FUTURE GENERATIONS, THAT HE WANTS TO WRAP THIS MATTER UP QUICKLY WITH BOTH SIDES COMFORTABLE WITH THE RESULT, AND THAT HE HENCE IS NOT TRYING TO PRECIPITATE A LAWYER'S CONFERENCE IN BAHRAIN. ON BASIS THIS CONVICTION, I URGE WE YIELD ON HIS "NIT PICKS" (PARA. 2 THIS MESSAGE) AND GIVE HIM INFORMALLY CLARIFYING LANGUAGE IN SUPPORT OUR PROPOSED TEXT FOR PARAS. (1) AND (4) OF DRAFT NOTE.

6. DEPARTMENT'S RESPONSE NOT LATER THAN COB OCTOBER 4 IS IMPORTANT SINCE WE, AND GOB, NEED BADLY TO REACH AT LEAST AGREEMENT IN PRINCIPLE ON ALL ELEMENTS MIDEASTFOR NEGOTIATION NOT LATER THAN OCTOBER 10.

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